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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/150,692	09/10/98	BACHAND	5137

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IM22/0822

EXAMINER
BECKER, D

ART UNIT	PAPER NUMBER
1761	17

DATE MAILED: 08/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/150,692

Applicant(s)

BACHAND ET AL.

Examiner

Drew E Becker

Art Unit

1761

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. In view of the Appeal Brief filed on June 18, 2001, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claim 14 is rejected under 35 U.S.C. 102(a) as being anticipated by WO 97/33822.

WO 97/33822 teach a rolled food item comprising a strip of food material (page 6, line 35), a paper strip (page 7, line 11), rolling the strips together (page 9, line 1), and the food strip having an area at the trailing edge with a greater moisture content than the rest of the food strip which was provided by an edible adhesive and which holds the roll together during packaging (page 16, line 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822.

WO 97/33822 teach the above mentioned concepts. It would have been obvious to one of ordinary skill in the art to vary the coverage area of the edible adhesive used by Wo 97/33822 since this would vary depending upon such factors as the type of food, type of adhesive, or strength of adhesion; and since this would have been done during the course of normal experimentation and optimization.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822 in view of Pulici [Pat. No. 3,669,007].

WO 97/33822 teach a rolled food item and a method of making a rolled food item comprising a strip of food material (page 6, line 35), a paper strip (page 7, line 11), rolling the strips together (page 9, line 1), and the food strip having an area at the trailing edge with a greater moisture content, provided by an edible adhesive, which holds the roll together during packaging (page 16, line 5). WO 97/33822 does not teach spraying the edible adhesive or the use of water free of adhesive type additives as the edible adhesive. Pulici teaches a method of producing a rolled food item by spraying water upon the food in order to keep it in a rolled state (column 5, lines 62-65; column 6, lines 58-64). It would have been obvious to one of ordinary skill in the art to incorporate the spraying of Pulici into the invention of WO 97/33822 since both are directed to methods of producing rolled foods, since the spraying of multiple drops would allow for a greater area of surface coverage for the edible adhesive thereby creating a stronger bond which would resist unrolling better than a single drop, and since edible adhesives were commonly sprayed as shown by Pulici. It would have been obvious to one of ordinary skill in the art to incorporate the water free of adhesives of Pulici into the invention of WO 97/33822 since both are directed to methods of producing rolled foods, since water would qualify as an edible adhesive as used by WO 97/33822, and since water was commonly known to tackify food materials and prevent unrolling without the use of additives as shown by Pulici (column 6, lines 58-64).

7. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822 as applied to claim 15 above, in view of Zoss [Pat. No. 5,853,836].

WO 97/33822 teach the above mentioned concepts as well as the food material being dehydrated fruit material (page 7, line 11), and the food strip being cut to the same length as the paper (page 8, line 23). WO 97/33822 do not teach the paper being silicon parchment paper and the paper being wider than the food strip. Zoss teaches a rolled food product and a method of making a rolled food product comprising the use of silicon parchment paper (column 3, line 53) and the paper being wider than the food strip (column 3, lines 57-62). It would have been obvious to one of ordinary skill in the art to incorporate the paper structure of Zoss into the invention of WO 97/33822 since both are directed to rolled foods with support materials, since Zoss teaches that silicon parchment paper is strong enough to resist tearing without being bulky (column 3, line 55), and since having the paper be wider than the food strip prevents the food strip from rubbing against fabrication equipment as taught by Zoss (column 3, line 63 to column 4, line 3).

8. Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822 and Pulici as applied to claim 3 above, in view of Zoss.

WO 97/33822, Pulici, and Zoss teach the above mentioned concepts. WO 97/33822, Pulici, and Zoss are combined for the above mentioned reasons and since all are directed to the production of rolled foods.

#### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-10 and 14-20 have been considered but are moot in view of the new ground(s) of rejection.

10. The art made of record and not relied upon is considered pertinent to applicant's disclosure. Pomara Jr [Pat. No. 5,263,407] and Madison et al [Pat. No. 4,516,487] teach methods of producing rolled foods and spraying water to secure them while Babiarz et al [Pat. No. 6,200,617 B1] teach a method of producing a rolled food and securing it with heat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker  
August 14, 2001

  
KEITH HENDRICKS  
PRIMARY EXAMINER